

KETCHIKAN CHARTER COMMISSION

REGULAR MEETING

March 26, 2004

The regular meeting of the Ketchikan Charter Commission commenced at 6:00 p.m., Friday, March 26, 2004, in the City Council Chambers.

A: Pledge of Allegiance**Roll Call**

PRESENT: PAINTER, OTTE, THOMPSON, FINNEY, KIFFER

ABSENT: HARRINGTON, MCCARTY

B: Ceremonial Matters/Introductions

NONE

C: Public Comments

NONE

D. Informational Reports and/or Commission Presentations

Chair Thompson indicated that he and Ms. Otte had gone to the Chamber of Commerce and it had gone fairly well.

He spoke about the questions from the last week's meeting and that he had forwarded them to City Attorney, Steve Schweppe, and to Borough Attorney, Scott Brandt-Erichsen.

Those questions were read and the answers given. (Note: the full text of those questions and answers are added to the end of these minutes.)

Chair Thompson indicated he had made a request of Al Hall, Borough Finance Director, and Borough Manager, Roy Eckert, to provide the areawide services currently received by Saxman, including the costs, but there had been no response to that information request to date.

The CD's of financial information from both the City and Borough have been

distributed.

Ms. Otte indicated that as of noon, 3/26, there had been 85 internet responses to the survey. KIFFER indicated that the boxes were complete for the paper survey responses, but he was holding on to them until the survey came out in the weekend paper.

Chair Thompson indicated that he attempted to distribute the survey at the Chamber lunch, however, he'd grabbed the draft Utility survey in error and neither he nor Ms. OTTE had noticed this until they had already been distributed. THOMPSON said he'd gotten most of the incorrect surveys back.

The copier was moved into the Charter office space. It does need some technical assistance to get it going, but an appointment has been made for Monday for a service technician to check it out. There is also a computer set up in the office. It is on loan from Marvin Davis of Tongass Business Center.

E. Consent Calendar

The minutes of the March 19, 2004 regular meeting were approved by unanimous voice vote.

F. Vouchers

NONE

It was noted that although there have been some expenditures, the authority to enter into the agreement has not been ratified at this point, so this item, for this week, was only on the agenda for approval of placement. There were no objections.

G-1, Authorization for the Chairman to enter into a Grant agreement with the Greater Ketchikan Chamber of Commerce and the Ketchikan Gateway Borough and authorization to amend the KCC budget

M/S PAINTER/OTTE to authorize the KCC Chairman to sign the grant agreement as shown in the attached document. I further authorize the adjustment of the KCC budget to reflect the \$600 administration fee being charged by the Greater Ketchikan Chamber of Commerce.

It was discussed whether Chair THOMPSON even needed to sign the agreement between the KGB & GKCC and it was pointed out that an additional signature line had been added to the agreement for his signature. If this isn't the case, Chair THOMPSON was sure there would be a Memorandum of Understanding with the Chamber as to the procedures necessary to obtain payment of vouchers.

A roll-call vote was taken on the question.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: HARRINGTON, MCCARTY

G-2: Review and approval of article XII, Service Areas & Areawide, of the Ketchikan 2004 Draft Charter in the Second reading of three

M/S PAINTER/FINNEY to approve Article XII, Service Areas & Areawide, of the Ketchikan 2004 DRAFT Charter in the second reading of three.

It was questioned whether the third reading had been indicated at the last week's meeting and OTTE indicated it was changed to make certain that the Article had the most opportunity for public review. There was no objection to this.

M/S PAINTER/FINNEY to strike "air-taxi" from 12.02 (h).

PAINTER said he wasn't satisfied with the response as to why it had been added in the first place. Government has no business in private enterprise and the reference to air-taxi in this locale refers to water aircraft, not water vessels.

KIFFER said he thought there were some air-taxi issues, but he thought they were limited to sales tax issues and it doesn't have anything to do in this section. He did say that he was uncomfortable with the language concerning airport police, which he said seems to try to explain the reasoning for it (the language) to be there. PAINTER pointed out that was a different issue.

A roll-call vote was taken to remove "air-taxi" from 12.02(h).

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: HARRINGTON, MCCARTY

THOMPSON questioned PAINTER as to whether he was comfortable with 12.03 (b), the wording relating to the former Shoreline Service Area as it was discussed last week. PAINTER indicated he hadn't heard any comment from anyone about the changes made the prior week. He said the retail development in the community was going to that area and the City is currently contracting with R&M Engineering on a water/sewer feasibility study to that area.

M/S OTTE/PAINTER to add a new section to 12.02, Mandatory Areawide Powers, that would be item (k), To provide disaster planning and emergency response.

OTTE pointed out that grants from the Federal government were provided to the community for emergency plans & response and without that power being designated, the assistance for local emergency plans would not be available.

A roll-call vote was taken on the motion.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: HARRINGTON, MCCARTY

KIFFER indicated that he was going to pass this Article through now, but a lot of his concerns about 12:03 and other items in this Article will become more apparent and then he would be revisiting the Article in the future.

PAINTER questioned KIFFER about the North Tongass Fire & EMS Service Area in that it is funded by property taxes. PAINTER said that he'd been billed by a North Tongass area merchant and there was an additional fee added to the bill for fire & EMS service. It was decided that while this may not be the best business practice, it was probably a way for the merchant to recoup the increases in property taxes caused by the formation of the new service area.

THOMPSON said that the way Section 12.07, EMS, is written may have to be revisited. At the time the document was written, Pond Reef was still in existence and now that there is a service area providing the referenced services, the section should be re-worded. He asked KIFFER to try to do this. KIFFER said that there were several things to be discussed at a later time that will highlight the problems in the whole Article and he is looking for information back on the survey and how the public perceives the services.

OTTE said that the individual surveys would not be provided, however, the questions and responses, including the comments, will be added to a Ketchikan Charter Commission Minutes

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spreadsheet and that document will be available each week, with additional info added. It will also be noted whether the response was internet or written. The internet surveys are totally anonymous. There was a concern mentioned that people could submit multiple surveys on the internet, but it was also pointed out that Sitnews has a way to track that information, so the responses will probably not be from the same persons.

A roll-call vote on the main motion, to approve Article XII, Service Areas and Areawide, in the second reading of three, was taken.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: HARRINGTON, MCCARTY

The motion passed with 5 yes votes.

G-3: Review and approval of article XIII, Saxman, of the Ketchikan 2004 Draft Charter in the Second reading of Two

M/S PAINTER/FINNEY to approve Article XIII, Saxman, of the Ketchikan 2004 DRAFT Charter in the second reading of two.

It was agreed that this Article would also have three readings so that the information requested from the KGB could be discussed.

It was pointed out that there's a difference between receiving areawide services for free and receiving them for payment of the share of the cost, similar to payment in lieu of taxes. It was requested that a portion of the last sentence of the Article, "Until otherwise provided by law, the City of Saxman shall continue to receive such areawide municipal services as it previously received from the Ketchikan Gateway Borough", be highlighted.

KIFFER questioned that if this Article does not pass or does not go into the Charter whether Saxman would not be exempted out of the new municipality. THOMPSON was requested to ask Dan Bockhorst and Mr. Schweppe the ramifications of removing this article from the Charter. PAINTER said that under the State rules for consolidation, they can remain as a city, but they would still be subject to the Charter because they are inside the Borough. We know that Saxman intends to remain a second-class City and exercise all their powers. KIFFER said he was looking for some participation from the Saxman residents and without their participation, he was unlikely to vote this Article through.

PAINTER said that one of his questions about the draft Charter, that if Saxman desires to remain apart from the consolidation, what does the new Charter's reference to the specific independent powers allowed to Saxman. He wanted to know what business the new municipality has to tell Saxman what they can do. OTTE said she thought it meant that the powers exercised by the new municipality in these areas would not have any authority over Saxman's right to exercise those powers.

THOMPSON said it goes back to paying a fair share for areawide services. Saxman should not be exempt from paying for services they receive, like the Transit.

KIFFER said that since it says "may" exercise the same powers as they did before consolidation, but it could be read that Saxman could not exercise further powers because they weren't exercising them prior to consolidation. He said this Article needs to be really studied and changed. He said he wasn't comfortable passing it through as it is now.

FINNEY said that it should be voted through until we get some answers. It was suggested that this Article be approved as "second reading of three" so that answers could be obtained from Mr. Bockhorst and Mr. Schweppe and Mr. Hall.

A roll-call vote was taken on Article XIII on the second reading of THREE.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON
AGAINST:
ABSENT: HARRINGTON, MCCARTY

The motion passed with 5 yes votes.

G-4: Review and approval of article XIV, Local Improvement & Service Districts, of the Ketchikan 2004 Draft Charter in the Second reading of Three

M/S PAINTER/FINNEY to approve Article XIV, Local Improvement & Service Districts, of the Ketchikan 2004 DRAFT Charter in the second reading of three.

It was noted that the Article is pretty standard and there was no discussion.

A roll-call vote was taken on the motion.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON
AGAINST:
ABSENT: HARRINGTON, MCCARTY

H-1: Appointment of Commissioner Otte to fill the vacant staff position

M/S PAINTER/FINNEY that the Ketchikan Charter Commission continue to utilize the services of Commissioner Deborah Otte to provide clerical support to the Commission and that Ms. Otte be reimbursed for her efforts at the hourly rate of \$20 per hour. This reimbursement shall be retroactive to March 1, 2004 and not exceed 20 hours per week in the future. The Commission shall enter into a personal services contract with Ms. Otte. The funds shall be appropriated from the approved budget.

Ms. OTTE indicated she would be abstaining from the vote and discussion on this item.

THOMPSON said that the staff search had been for someone that has the technical skills to provide the packets; liaison with Sitnews, the City and the Borough; transcription of the minutes; and someone that has a little experience in this arena so that Ms. Otte need not spend hours training and checking the work product of someone not skilled in these areas. There were a couple of candidates that fit those requirements, however, they declined the position because they didn't want to commit to the entire duration of the commission's tasks. He said that OTTE had already put a lot of time into this effort and until someone qualified can be found that meets the job requirements, she should be reimbursed and continue providing these services to the Commission.

PAINTER said his only concern is that while performing the secretarial duties during the meetings, perhaps Ms. OTTE's participation in the meetings hampered by her duties. Ms. OTTE indicated it wasn't.

FINNEY asked that when the position was advertised, was it for \$20/hour. The position was advertised at \$15/DOE and \$20/hour was approved in the budget. He said that he thought the Commission was getting way more than their money's worth by the job performed by Ms. OTTE, however, he thought the search for an employee should continue and if someone qualified comes along, the duties should be transferred to that person.

A roll-call vote was taken on the motion.

FOR: PAINTER, KIFFER, FINNEY, THOMPSON
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AGAINST:
ABSENT: HARRINGTON, MCCARTY
ABSTAIN: OTTE

The motion passed with 4 yes votes and one abstention.

H-2: Review and Approval of Article XV, Charter Amendment, of the City of Ketchikan's Charter of 2001 in the first reading

M/S PAINTER/FINNEY to approve Article XV, Charter Amendment, of the 2001 Ketchikan Charter in the first reading.

FINNEY asked if the number of signatures needed for an Initiative Petition had been covered in earlier Articles of the DRAFT Charter. THOMPSON said that it's covered in State law based on a percentage of the voters who voted in the last election. KIFFER asked if it even needed to be addressed in the Charter. THOMPSON said he'd ask the Clerks for comments on this issue. FINNEY said that he wouldn't mind leaving it in so that someone picking up the Charter could find the steps necessary for changing the Charter in the document.

PAINTER said that the Commission had been reminded of the steps that must be taken to amend the Charter many times during the current review. KIFFER said it didn't seem like such an unwieldy effort. It was pointed out that special elections and the time involved for the initiative petition and the elected Commission are especially time consuming.

A roll-call vote on the motion was taken.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON
AGAINST:
ABSENT: HARRINGTON, MCCARTY

The item passed with 5 yes votes.

H-3: Review and approval of Article XVI, General Provisions, of the City of Ketchikan's Charter of 2001 in the first reading

M/S PAINTER/FINNEY to approve Article XVI, General Provisions, of the 2001 Ketchikan Charter in the first reading.

FINNEY questioned if taking the 1% tax areawide for the hospital in 16.06 (b)
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was not done now. It was indicated that it was just collected within the boundaries of the City at this time. As to how much money this would generate, it was indicated that information is included in the financials on the disk.

M/S FINNEY/PAINTER to add the proposed amendment by HARRINGTON to add the following wording to the end of Section 16.06 (b): "Within three years of ratification of the charter, the Assembly will present for voter approval a reauthorization of a sales tax, including both areawide and nonareawide sales taxes. All future changes to the sales tax will be submitted to the entire municipality for ratification. Unless voters reauthorize it, the sales tax will terminate on December 31, 2008."

FINNEY said that HARRINGTON is concerned that only the City Service Area will be the only entity directing where the sales taxes collected within their boundaries are allocated.

THOMPSON said from reading HARRINGTON's email, the City Service Area would be the ones who could approve to collect it. The issue goes to the fact that the City's contention in 2001 that there were many City services that the City was paying for that the Borough residents were getting the benefits of those services without paying for them: the hospital, fire, and police while the Borough residents were in town. The other side is the fact that 85% of the commerce is conducted within the City's area and the sales taxes that are collected only within the City, the 3 %, and only used for City services, are also paid for by Borough residents and that's the inequity. There's an inequity on both sides. There are services that people are getting that they're not paying for 100% and there are people paying the tax for a service that they don't have any say over where the money goes. This Section just reauthorizes all the sales taxes. The one sentence takes the hospital areawide.

THOMPSON said he's not sure if the amendment actually gets to what HARRINGTON wants. He said that reauthorization of the sales tax is not a bad idea. He said that once the Commission gets through the transition plan and the budget, it may decided there should be an areawide sales tax. Maybe sales taxes would be the way to pay for areawide services and the service area services could be paid out of property taxes. He said that logically, that makes more sense, but it's unknown if the numbers would work out. He said he certainly didn't want to raise anyone's taxes, but rather lower them if possible. If the property tax collected within the service area is sufficient enough to pay for the service area services, then the sales tax could alternatively be used for areawide things.

PAINTER said that he thought Scott Brandt-Erichsen had explained that an areawide sales tax has to be spent on areawide services. It cannot be type-specific to a function in one particular service area. He said he was unsure what HARRINGTON was looking for.

FINNEY said, for example, there was a 1% areawide sales tax on fire and the fire services would be on an areawide basis, could that 1% tax be pro-rated to the different fire districts based on any number of factors, the number of people served; the number of fire engines; or the number of firefighters? PAINTER said he thought that would be a question for one of the attorneys.

KIFFER said he thinks there is a fundamental problem that trying provide for an areawide sales tax for a service that is physically in only one area but to the benefit of all (the airport or the hospital).

THOMPSON said he sees the problem would be with an areawide sales tax that supported City public works, which currently 1.5% of the City's sales tax is set aside for that department. If that sales tax were extended across the Borough, then those funds could not be targeted just to the City Service Area, they would have to be areawide. If you have a service area collecting a tax within its boundaries, those funds can be used for service area services, but if they are collected on an areawide basis, it has to be an areawide service. The airport and hospital are both areawide services, providing services to everyone, no matter where they live.

KIFFER said that he agrees with that, and that his point is there are certain services that are provided that truly are areawide, but they are within a certain service area. He said the difference, like public works and fire, is that if those services are funded areawide with a sales tax, then the people on the north and south end are going to have a right to demand the same level of service or some pro-rata share of it.

FINNEY said his point was the pro-rata share of it. He said to him it makes good sense because the fire & EMS service are areawide. They may be in a service area and they may be at different level, but they are areawide. He said he didn't want to write out the ability as we come back to this, to have an areawide that would go to those services.

PAINTER said he thought the only way that could happen is, as HARRINGTON talked about (and he understood him) that if it is the desire of the service areas to provide their own fire/ems and fund that through sales tax, then that service area would have to, by voter approval within the service area, do their own sales tax, just as currently the City has their own sales tax within their boundaries,

which would probably just about terminate the thought of an areawide sales tax.

THOMPSON said that what is being said is that all the sales & use taxes levied within the former City of Ketchikan and the former KGB will remain in effect until changed under the change provisions of the Charter with the exception that the 1% dedicated City sales tax for the hospital will go areawide within a year and the 2 _ % will remain inside the City for their service area services. Once the budget has been reviewed, that may be the change, but that's the way the Article reads right now. HARRINGTON's amendment might cause some legal problems because it says that all future changes to the sales tax, regardless of whether it's a service area or areawide tax, will be submitted to the entire municipality and he didn't think that was legal. It is the Commission's understanding that areawide funds cannot be taken and ear-mark them for a specific service area and all citizens of the new municipality cannot vote on something that's strictly a service area service. Service areas who want to fund things by sales tax must elect, within their own service area only, to adopt that sales tax. The proposed revenue would really have to be scrutinized because there is minimal sales tax outside the City limits.

FINNEY said that if someone from the City is in an accident and the vehicle catches fire outside the City limits, one of the other fire departments is going to respond. Similarly, when the rural resident is within the City limits, that same service is afforded. The difference is when the rural resident is in the City limits and spends his money, his sales taxes help pay for that service, and outside the City limits, that resident is also paying in his/her own service area for the service, but the City residents are not paying the double fees. FINNEY said that is one of the inequities that needs to be addressed.

THOMPSON recognized Marvin Hill, 808 Forest Park Drive, who said that voting on sales taxes every few years is a good thing because there have been many taxes that were supposed to sunset over the years, but the funds just keep being utilized for further building. (Mr. Hill mentioned the use of marble tile in building the high school and how expensive it was and how replacing it is very expensive.) He mentioned that he helps pay, through taxes, for the library, but hasn't utilized the services, but he doesn't mind paying because it's for the good of the community.

It was pointed out that there was an amendment on the table. It could either be approved in total and see what response is garnered or it could be turned down with the original section highlighted for review next week. The amendment was re-read. OTTE mentioned that a hard date was being included in the Charter, when it's unknown what time frame will be final in the Ketchikan Charter Commission Minutes

approval of the consolidation.

KIFFER said he thought there were two things the amendment would accomplish. One, he said he'd heard property tax cap and sales tax cap and voting requirement for sales tax from many residents. He said he thought the amendment should be approved and highlighted, so it can be reviewed further in the future.

FINNEY said he wasn't happy with the language of the amendment. He said he approved of the concept but he would probably vote against it at that time and come back at the next meeting with some information. He said he'd like to see the playing field leveled for the rural residents. He mentioned that if the Shoreline area decided in the future to become a service area again, taking with it the sales taxes from Walmart, Shoreline would be the Kuwait of the Ketchikan service areas. There are some inequities in that, no matter how you look at it.

THOMPSON indicated he liked the first sentence in the amendment, "Within three years of ratification of this charter, the Assembly will present for voter approval a reauthorization of a sales tax, including both areawide and nonareawide sales taxes." He said he thought that future changes to the sales tax is already addressed in the Charter, with stipulations for voter approval, and the termination, the sun-setting of all taxes by a certain date, shouldn't be there because a hard date in the Charter is not appropriate.

OTTE moved to amend the amendment by striking everything after the first sentence of the amendment. THOMPSON seconded that. FINNEY (the original Commissioner bringing up the amendment and PAINTER, the second) agreed that change could be a friendly amendment.

PAINTER said that once the budget process starts, this section may need to be reviewed. He said that once consolidation is approved, the new Assembly will hopefully be for reductions. He said he's tired of the current elected officials bending to the wishes of special interest groups. FINNEY agreed.

A roll-call vote was taken on the amendment, as changed above with the note that section will be highlighted.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: HARRINGTON, MCCARTY

The amendment passed with 5 yes votes.

It was noted that the transition plan will help clarify some of the language in the Articles and that hard numbers and dates can be put in the transition plan, which becomes a part of the Charter by reference in Section 16.09.

A roll-call vote was taken on the main motion to approve Article XVI, General Provisions, of the 2001 Ketchikan Charter in the first reading.

FOR: PAINTER, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: HARRINGTON, MCCARTY

The motion, as amended, passed with 5 yes votes.

I: Commission Comments

There were some humorous references to the missing members and the brevity of the meeting.

PAINTER mentioned that the news article about the Chamber lunch said something about 30 days and being completed within that time. It was pointed out that the quote referenced the first review of the Charter would be complete within 30 days. Not completed.

The meeting was adjourned at 7:18 p.m.

From: Glen Thompson
Sent: Tuesday, March 23, 2004 9:36 AM
To: Steven Schweppe; Scott Brandt-Erickson
Cc: Ketchikan Charter Commission
Subject: Charter Commission Questions

These questions arose at last week's meeting. We would appreciate either of you giving us your opinion/advice:

Section 10.10

Scott: What would be the effect of adding "or fees" to the language? Such as in paragraph 2 : "Municipal taxes **or fees** on personal property shall be a debt to the municipality from the persons to whom they are assessed. If any person to whom such taxes **or fees** are assessed fails or refuses to pay the taxes **or fees**, such taxes **or fees** and accrued charges, penalties, and interest may be collected"

Steve:

Why is the language in Section 10.08 (and also similar language in 8.03(e)) so complex and detailed rather than simply saying "as set by ordinance?"

Steve:

In section 12.02(c) Mandatory Area Wide Powers, why is there a reference to EMS powers?

In Section 12.02(h), why is there a reference to Airport Police and what does the reference to "air taxi" mean?

Thank you in advance!
Glen Thompson, Chair

----- Original Message -----

From: [Scott Brandt-Erichsen](#)
To: 'Glen Thompson'
Cc: [Steven Schweppe](#)
Sent: Tuesday, March 23, 2004 12:10 PM
Subject: RE: Charter Commission Questions

Glen,

The provisions are a paraphrasing of the state statutes in AS 29.45.300 and .310. These sections provide:

Sec. 29.45.300. Tax liability.

Statute text

(a) The owner of assessed personal property is personally liable for the amount of taxes assessed against the property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the

municipality.

(b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

History

(§ 12 ch 74 SLA 1985)

Annotations

NOTES TO DECISIONS

Taxes are not a lien unless expressly made so by statute, and when expressly created, the lien is not to be enlarged by construction. *Libby, McNeill & Libby v. City of Yakutat*, 206 F.2d 612 (9th Cir. 1953), decided under former, similar law.

Real and personal property may not be sold to satisfy taxes on both as lump sum. - Where the court ordered both real and personal property sold as an entirety to satisfy taxes, penalty and interest due upon both classes in a single, lump sum, the court erred. *Libby, McNeill & Libby v. City of Yakutat*, 206 F.2d 612 (9th Cir. 1953), decided under former, similar law.

Lien may be enforced only against assessed property. - The remedy provided by this article is available only to enforce the lien of real property taxes against the realty assessed. *Libby, McNeill & Libby v. City of Yakutat*, 206 F.2d 612 (9th Cir. 1953), decided under former, similar law.

Date of accrual. - Pursuant to this section, AS 29.45.110, and AS 29.45.120, the tax "accrues" in full each year on January 1; thus, a vessel's tax status became fixed for the full tax year on the date of its assessment, and no adjustment was required for post-assessment changes in its value, situs, and ownership. *Kenai Peninsula Borough v. Arndt*, 958 P.2d 1101 (Alaska 1998).

Sec. 29.45.310. Enforcement of personal property tax liens by distraint and sale.

Statute text

(a) A lien for personal property taxes may be enforced by distraint and sale of the property. The municipality shall provide the procedure for distraint and sale by ordinance. A seizure, levy, or distraint is not legal unless demand is first made of the person assessed for the amount of the tax, penalty, and interest, and a sale is not valid unless made at public auction no sooner than 15 days after notice is published. The seizure is made by virtue of a warrant issued by

the municipal clerk to a peace officer.

(b) If the personal property sold is not sufficient to satisfy the tax, penalty, and interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest, and costs of sale. If the property is sold for more money than is needed to satisfy the tax, the municipality shall remit the excess to the former record owner upon presentation of a proper claim. A claim for the excess filed after six months of the date of sale is forever barred.

History

(§ 12 ch 74 SLA 1985)

Sec. 29.45.320. Real property tax collection.

Statute text

(a) The municipality shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in AS 29.45.070 or on a taxable interest in tax-exempt property is not paid when due, a municipality may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to enforce the lien.

History

(§ 12 ch 74 SLA 1985)

Under AS 29.10.200 these limitations apply to home rule municipalities. While you could add fees to the portion providing that fees were a debt of the person assessed, the remedy of distraint and sale which is provided for enforcing a prior and paramount tax lien is a special remedy for tax collection granted by the statutes and would not be available for fees. Thus I would recommend against adding fees in this section. If the objective is merely to make clear that fees can be used I would suggest a separate section providing that the Assembly may levy and provide for the collection of such fees for municipal services as it deems appropriate.

By the way, my recollection of the specific mention of airport police in 12.02(h) was so that it was clear that the airport police were not under an areawide police power but were ancillary to the airport powers only. There had been concern that if this was not clear the issue of whether you could have police there or whether that meant you had areawide police because they were an areawide power would have confused or concerned some people.

Scott

----- Original Message -----

From: "Steve Schweppe"

To: "Glen Thompson"

Cc: "Scott Brandt-Erichsen"

Sent: Wednesday, March 24, 2004 4:35 PM

Subject: Re: Charter Commission Questions

I agree with Scott that collection of fees should not be added to the tax lien section of the Charter. It is best left to the Assembly to address the legal issues which will arise if a lien on property is used to collect fees. Since the government will be home rule, the Assembly does not need authorization from the Charter to exercise legislative powers such as determining the method for collection of fees owed the government.

As for your question on the payment in lieu of taxes by the port department and KPU, you have touched on a topic which received considerable debate. The language in 10.07 and 8.03(e) was drafted by Bob Newell and Mayor Weinstein. I've never understood it very well, but believe it was intended to reflect the fact that neither KPU nor the port department currently make payments in lieu of Borough taxes. Since the Borough cannot tax municipal property it cannot tax KPU or the port department. As a home rule municipality the City can, however impose a payment in lieu of taxes on its KPU and port property. I think that this language was intended to assure that KPU and port property would not receive a big jump in payment in lieu of taxes once consolidation occurred. Their payments would still be based on what they paid the City and not what the Borough taxes. Since the City was using reserves to lower its tax rate and thus lower the payments in lieu of taxes, the payment was allowed to increase proportionately to the amount that the reserves were used. While I never liked the language, it highlights the problem of payment in lieu of taxes. Since neither KPU nor the port department can appeal an assessment, it is important to protect them from disproportionate payments to the general government. It may be equally important, however, for KPU and the port department to make a payment in lieu of service areas taxes to cover police, fire and public works services those departments receive.

Section 12.02(c) mentions EMS services in order to avoid any argument that EMS is a "hospital and public health service". The draft charter makes hospital and public health an areawide power. Since we knew that EMS was provided by Pond Reef and was not an area wide power we wanted to be sure that no one could assert that Section 12.07 could be avoided by placing EMS under hospital and public health.

Section 12.02(h) includes airport police as an areawide service. Elsewhere we state that the power to operate a police department is a service area power. However, the airport police department is an areawide service. It is a necessary part of operating the areawide airport power. If we had not specified that airport police was within the areawide power to provide airports, we would have created a conflict within the Charter. One section would have said that the government could not create an areawide police department while another section would require an areawide airport police department in order to operate the airport. It would have created an interesting problem of funding the airport police on a service area basis.

We do not have good records concerning the reference to "air-taxi" in Section 12.02(h). As best we can determine it came from a state employee who worked with Dan Bockhorst in reviewing our preliminary draft. The first mention of it is found in a document typed outside of this office. I assume it gives power to regulate passenger and freight air service to surrounding communities to the extent that the federal and state governments have not pre-empted local regulation. Since it appeared to do no harm and appeared to give little authority which did not already exist, I did not question it.